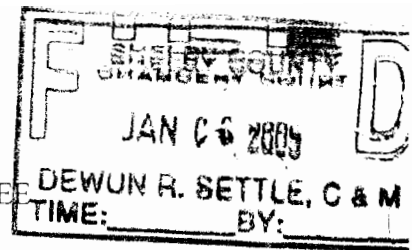


IN THE CHANCERY COURT FOR SHELBY COUNTY, TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS



STATE OF TENNESSEE, *ex rel.* ROBERT)
E. COOPER, JR., Attorney General and)
Reporter,)

Plaintiff,)

v.)

No. CH-08-2130-2
JURY DEMAND

PATRICK & PATRICK, LLC, a for-profit)
Tennessee limited liability company doing)
business as PATRICK & PATRICK)
LOSS MITIGATION SERVICES, LLC)
and as an "Independent VRTMG Agent" of)
VR TECH MARKETING GROUP, LLC;)
and DENISE PATRICK also known as)
SONDRETTE D. PATRICK, individually)
and doing business as PATRICK &)
PATRICK LOSS MITIGATION)
SERVICES, LLC and as an "Independent)
VRTMG Agent" of VRTECH)
MARKETING GROUP, LLC,)

Defendants.)

**MEMORANDUM OF LAW IN SUPPORT OF
STATE'S MOTION FOR STATUTORY TEMPORARY INJUNCTION
AND ASSET FREEZE**

The State of Tennessee has initiated a civil law enforcement proceeding brought by the Attorney General of the State of Tennessee ("Attorney General" or "State") pursuant to the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* ("TCPA"), the Tennessee Credit Services Businesses Act, Tenn. Code Ann. § 47-18-1001 *et seq.*, the Unauthorized Practice and Improper Conduct statutes, Tenn. Code Ann. § 23-3-101 *et seq.* "UPL

statutes”), the Attorney General’s general statutory authority at Tenn. Code Ann. § 8-6-109, and the Attorney General’s authority at common law to secure injunctive and other equitable relief prohibiting Defendants from engaging in foreclosure rescue services or other unfair or deceptive acts or practices; from offering, in any manner, or conducting the services of a credit services business within the State of Tennessee, without first registering a bond fully consistent with the provisions of Tenn. Code Ann. § 47-18-1011; and from engaging in law business by advising or counseling consumers as to secular laws for valuable consideration without a law license.

Defendants in this case have engaged in unfair or deceptive acts or practices in Tennessee by offering foreclosure rescue services for consumers but in fact provide some or no services for a fee that do not help and in some cases harmed the consumers who paid them a service fee. Defendants have also offered the services of a credit services business within the State of Tennessee, without first registering a bond fully consistent with the provisions of Tenn. Code Ann. § 47-18-1011. Furthermore, Defendants have also unlawfully engaged in law business without being duly licensed to practice law in the State of Tennessee by advising or counseling consumers regarding secular laws for valuable consideration. This Court has the authority to take the steps necessary to protect past, present, and future consumers by issuing a statutory temporary injunction and asset freeze against all Defendants. For the reasons more fully stated below, a statutory temporary injunction and asset freeze should issue pending a full hearing on this matter.

PARTIES

Plaintiff, State of Tennessee, by and through its Attorney General and Reporter, Robert E. Cooper, Jr., is charged with enforcing the Tennessee Consumer Protection Act of 1977 (“TCPA”), Tenn. Code Ann. § 47-18-101 *et seq.*, which prohibits unfair or deceptive acts or

practices affecting the conduct of any trade or commerce, and the Tennessee Credit Services Businesses Act, Tenn. Code Ann. § 47-18-1001 *et seq.* Under Tenn. Code Ann. § 47-18-108(a)(1), the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the TCPA and to secure such equitable and other relief as may be appropriate in each case.

Upon information and belief, Defendant Patrick & Patrick, LLC doing business as Patrick & Patrick Loss Mitigation Services, LLC (“Patrick & Patrick”), is a for-profit limited liability company registered to do business in the State of Tennessee. According to the documents filed with the Tennessee Secretary of State, Defendant Patrick & Patrick is located at 8487 Freiden Trail, Memphis, Tennessee 38125. Defendant Patrick & Patrick’s registered agent for service of process is Sondrette D. Patrick, 8487 Freiden Trail, Memphis, Tennessee 38125. At all times relevant to this Complaint, Defendant Patrick & Patrick, in the ordinary course of its business, regularly solicits and purports to provide consumers with foreclosure assistance, for which a “service fee” is charged.

Upon information and belief, Defendant Denise Patrick, also known as Sondrette D. Patrick (“Denise Patrick”), is an individual residing in Shelby County, Tennessee at 8487 Freiden Trail, Memphis, Tennessee 38125. According to the records filed on behalf of Defendant Patrick & Patrick with the Tennessee Secretary of State, Defendant Denise Patrick is and has been the secretary, member and “officer” of Defendant Patrick & Patrick. At all times relevant to this Complaint, Defendant Denise Patrick, in the ordinary course of her business, regularly solicits and purports to provide consumers with foreclosure assistance, for which a “service fee” is charged. At all times relevant to this Complaint, Defendant Denise Patrick has actively participated in the acts and practices at issue in this Complaint including the unlawful

conduct alleged herein and/or has had the authority and/or control to stop Defendants' violations of the law.

Upon information and belief, Defendant Patrick & Patrick and Defendant Denise Patrick have operated, controlled and conducted business via the Internet website, www.patrickandpatricklm.com.

Upon information and belief, Defendant Patrick & Patrick and Defendant Denise Patrick have also offered the services of a credit services business as an "Independent VRMTG Agent" of VRTech Marketing Group, LLC, via the Internet website, <http://www.vrtechmarketinggroup.com/dpatrick/>.

Defendant Patrick & Patrick and Defendant Denise Patrick are collectively referred to herein as "Defendants."

GENERAL ALLEGATIONS

As a preface, the State of Tennessee generally alleges that the Defendants have engaged in unlawful conduct in the way they advertise, offer, and provide "foreclosure rescue" services. Defendants offer services in a manner that is misleading, deceptive and unfair to consumers. Basically, Defendants represent to consumers that they will keep a consumer's home out of foreclosure but fail to deliver as promised.

The State generally alleges that the Defendants have: (a) offered services or guaranteed results that they could not or did not provide; (b) offered legal advice to consumers when they are not attorneys; (c) taken fees from consumers without providing any benefit or corresponding service; (d) failed to deliver on promises made to consumers often leaving consumers in a worse position than they would have been without the "services" of the Defendants; and (e) offered credit repair services in the State of Tennessee without having first registered a statutorily-

required bond with the State of Tennessee.

Further, the State alleges that Defendants have collected a substantial amount of money, at a minimum the amount of \$12,682.89, from Tennessee consumers without providing the promised services and Tennessee consumers have suffered ascertainable losses as a result of Defendants' conduct.¹

STATEMENT OF FACTS

Defendants typically solicit consumers to pay for their foreclosure rescue services by cold calling consumers at their homes.² These consumers have all fallen behind on their mortgages and almost all have received notices of foreclosure.³ One consumer was approached while at General Sessions Court and solicited by someone who identified himself as an associate of Denise Patrick and told the consumer that Ms. Patrick worked with mortgage companies to help

¹ Affidavit of Andrea Benson ¶¶ 11, 23, attached as Exhibit D to the State's Motion; Affidavit of Walter Bradley ¶ 23, attached as Exhibit E to the State's Motion; Affidavit of Herbert Coffey ¶¶ 14, 19, attached as Exhibit F to the State's Motion; Affidavit of Angie Smith-Wright ¶¶ 10, 18, attached as Exhibit G to the State's Motion; Affidavit of Gwendolyn Stewart-Jeffrey ¶¶ 14, 23, attached as Exhibit H to the State's Motion; Affidavit of Vernisa Vinson ¶¶ 10, 19, attached as Exhibit I to the State's Motion; Affidavit of Lassissa Zachary ¶¶ 4, 7, 12, 20, attached as Exhibit J to the State's Motion; and Affidavit of Angela Zepess ¶¶ 9, 20, attached as Exhibit K to the State's Motion.

² Affidavit of Andrea Benson ¶ 6, attached as Exhibit D to the State's Motion; Affidavit of Walter Bradley ¶ 7, attached as Exhibit E to the State's Motion; Affidavit of Angie Smith-Wright ¶ 4, attached as Exhibit G to the State's Motion; Affidavit of Vernisa Vinson ¶ 5, attached as Exhibit I to the State's Motion; and Affidavit of Lassissa Zachary ¶ 4, attached as Exhibit J to the State's Motion.

³ Affidavit of Andrea Benson ¶ 5, attached as Exhibit D to the State's Motion; Affidavit of Walter Bradley ¶ 6, attached as Exhibit E to the State's Motion; Affidavit of Herbert Coffey ¶ 4, attached as Exhibit F to the State's Motion; Affidavit of Angie Smith-Wright ¶ 4, attached as Exhibit G to the State's Motion; Affidavit of Vernisa Vinson ¶ 4, attached as Exhibit I to the State's Motion; and Affidavit of Lassissa Zachary ¶ 4, attached as Exhibit J to the State's Motion.

prevent people from losing their homes.⁴

A woman who identifies herself as Denise Patrick typically calls a consumer, tells the consumer she knows that his or her house is about to be foreclosed on, and then promises to save the consumer's home from foreclosure.⁵

Defendant Denise Patrick, on behalf of the Defendants, tells consumers that she learned of the impending foreclosures from public listings.⁶

Defendant Denise Patrick, on behalf of the Defendants, told some consumers that she had been doing this type of foreclosure rescue work for many years and in at least one case told a consumer that she had helped many "elite" people, like doctors and lawyers with foreclosure situations.⁷

Defendant Denise Patrick, on behalf of the Defendants, told some consumers that she had contacts with their respective mortgage companies and could work with them to stop the

⁴ See Affidavit of Gwendolyn Stewart-Jeffrey ¶ 9, attached as Exhibit H to the State's Motion.

⁵ Affidavit of Andrea Benson ¶¶ 6-7, attached as Exhibit D to the State's Motion; Affidavit of Walter Bradley ¶¶ 7-9, attached as Exhibit E to the State's Motion; Affidavit of Herbert Coffey ¶¶ 6-7, attached as Exhibit F to the State's Motion; Affidavit of Angie Smith-Wright ¶¶ 4-5, 7, attached as Exhibit G to the State's Motion; Affidavit of Vernisa Vinson ¶¶ 5-7, attached as Exhibit I to the State's Motion; Affidavit of Lassissa Zachary ¶ 4, 6, attached as Exhibit J to the State's Motion; and Affidavit of Angela Zepess ¶ 8, attached as Exhibit K to the State's Motion.

⁶ Affidavit of Andrea Benson ¶ 6, attached as Exhibit D to the State's Motion; Affidavit of Vernisa Vinson ¶ 5, attached as Exhibit I to the State's Motion; and Affidavit of Lassissa Zachary ¶ 4, attached as Exhibit J to the State's Motion.

⁷ Affidavit of Walter Bradley ¶ 8, attached as Exhibit E to the State's Motion; Affidavit of Angie Smith-Wright ¶ 7, attached as Exhibit G to the State's Motion; and Affidavit of Vernisa Vinson ¶ 6, attached as Exhibit I to the State's Motion.

impending foreclosures.⁸

Defendant Denise Patrick, on behalf of the Defendants, told some consumers that their mortgage companies would not be willing to work with them directly and that they needed Defendants to work with the mortgage companies directly on their behalf.⁹

During this initial telephone call, Defendant Denise Patrick, on behalf of the Defendants, then asked consumers about the amount of their monthly mortgage payment.¹⁰ Defendant Denise Patrick, on behalf of the Defendants, then said that she needed the amount of one monthly mortgage payment and an additional \$300.00 for “service fees” for Defendants to help the consumers.¹¹

Defendant Denise Patrick, on behalf of the Defendants, told consumers that the amount

⁸ Affidavit of Walter Bradley ¶ 9, attached as Exhibit E to the State’s Motion; Affidavit of Vernisa Vinson ¶ 6, attached as Exhibit I to the State’s Motion; and Affidavit of Angela Zepess ¶ 8, attached as Exhibit K to the State’s Motion.

⁹ Affidavit of Andrea Benson ¶ 15, attached as Exhibit D to the State’s Motion; Affidavit of Angie Smith-Wright ¶ 7, attached as Exhibit G to the State’s Motion.

¹⁰ Affidavit of Andrea Benson ¶ 8, attached as Exhibit D to the State’s Motion; Affidavit of Walter Bradley ¶ 10, attached as Exhibit E to the State’s Motion; Affidavit of Herbert Coffey ¶ 8, attached as Exhibit F to the State’s Motion; Affidavit of Angie Smith-Wright ¶ 6, attached as Exhibit G to the State’s Motion; Affidavit of Gwendolyn Stewart-Jeffrey ¶ 11, attached as Exhibit H to the State’s Motion; Affidavit of Vernisa Vinson ¶ 8, attached as Exhibit I to the State’s Motion; Affidavit of Lassissa Zachary ¶ 4, attached as Exhibit J to the State’s Motion; and Affidavit of Angela Zepess ¶ 7, attached as Exhibit K to the State’s Motion.

¹¹ Affidavit of Andrea Benson ¶ 8, attached as Exhibit D to the State’s Motion; Affidavit of Walter Bradley ¶ 10, attached as Exhibit E to the State’s Motion; Affidavit of Herbert Coffey ¶¶ 8-9, attached as Exhibit F to the State’s Motion; Affidavit of Angie Smith-Wright ¶ 6, attached as Exhibit G to the State’s Motion; Affidavit of Gwendolyn Stewart-Jeffrey ¶ 11, attached as Exhibit H to the State’s Motion; Affidavit of Vernisa Vinson ¶ 8, attached as Exhibit I to the State’s Motion; Affidavit of Lassissa Zachary ¶ 4, attached as Exhibit J to the State’s Motion; and Affidavit of Angela Zepess ¶ 7, attached as Exhibit K to the State’s Motion.

of the one month mortgage payment was for Defendants to forward to their respective mortgage servicers.¹² In at least one case, Defendant Denise Patrick, on behalf of the Defendants, said that she would use that payment amount to negotiate a loan modification with the mortgage company.¹³

Defendant Denise Patrick, on behalf of the Defendants, instructed some consumers to go to First Tennessee Bank and directly deposit the one month mortgage payment amount and \$300.00 in “service fees” into Defendants’ bank account.¹⁴

Defendant Denise Patrick, on behalf of the Defendants, instructed at least one consumer to pay with her debit card.¹⁵ When the consumer received a receipt for this debit card transaction in the mail, Defendants had redacted their physical address.¹⁶

Defendants only corresponded with consumers by telephone, fax, and in person at the

¹² Affidavit of Walter Bradley ¶ 23, attached as Exhibit E to the State’s Motion; Affidavit of Herbert Coffey ¶ 8, attached as Exhibit F to the State’s Motion; Affidavit of Angie Smith-Wright ¶ 9, attached as Exhibit G to the State’s Motion; Affidavit of Gwendolyn Stewart-Jeffrey ¶ 11, attached as Exhibit H to the State’s Motion; Affidavit of Vernisa Vinson ¶ 10, attached as Exhibit I to the State’s Motion; and Affidavit of Angela Zepess ¶ 7, attached as Exhibit K to the State’s Motion.

¹³ Affidavit of Andrea Benson ¶ 8, attached as Exhibit D to the State’s Motion; Affidavit of Angie Smith-Wright ¶ 6, attached as Exhibit G to the State’s Motion; Affidavit of Vernisa Vinson ¶ 10, attached as Exhibit I to the State’s Motion; and Affidavit of Angela Zepess ¶ 7, attached as Exhibit K to the State’s Motion.

¹⁴ Affidavit of Walter Bradley ¶¶ 13-14, attached as Exhibit E to the State’s Motion; Affidavit of Herbert Coffey ¶ 8, attached as Exhibit F to the State’s Motion; and Affidavit of Angie Smith-Wright ¶¶ 9-11, attached as Exhibit G to the State’s Motion.

¹⁵ Affidavit of Andrea Benson ¶¶ 10-11, attached as Exhibit D to the State’s Motion.

¹⁶ Affidavit of Andrea Benson ¶ 12 and Collective Exhibit 1, attached as Exhibit D to the State’s Motion.

consumers' homes.¹⁷ Defendants only used a Post Office Box for their address on paperwork, on business cards, and on their website.¹⁸ Consumers did not have a physical office location to go to if they had problems getting in touch with Defendants.¹⁹ In some cases, Defendant Denise Patrick, on behalf of the Defendants, insisted on setting up appointments to come to the consumers' homes later that same day or the next day to talk about her foreclosure rescue services, pressure consumers to sign contracts, and collect money for the one month mortgage payment amount and Defendants' "service fees."²⁰

In some cases, if consumers were not financially able to pay Defendants the entire amount of the one month mortgage payment and \$300.00 "service fees," Defendant Denise Patrick, on behalf of the Defendants, made these consumers sign a promissory note for the

¹⁷ Affidavit of Andrea Benson, attached as Exhibit D to the State's Motion; Affidavit of Walter Bradley, attached as Exhibit E to the State's Motion; Affidavit of Herbert Coffey, attached as Exhibit F to the State's Motion; Affidavit of Angie Smith-Wright, attached as Exhibit G to the State's Motion; Affidavit of Gwendolyn Stewart-Jeffrey, attached as Exhibit H to the State's Motion; Affidavit of Vernisa Vinson, attached as Exhibit I to the State's Motion; Affidavit of Lassissa Zachary, attached as Exhibit J to the State's Motion; and Affidavit of Angela Zepess, attached as Exhibit K to the State's Motion.

¹⁸ Exhibit 1 to Affidavit of James Kempvane, attached as Exhibit C to the State's Motion; Collective Exhibit 1 and Collective Exhibit 2 to Affidavit of Andrea Benson, attached as Exhibit D to the State's Motion; Exhibits 4 and 8 to Affidavit of Walter Bradley, attached as Exhibit E to the State's Motion; Collective Exhibit 1 to Affidavit of Herbert Coffey, attached as Exhibit F to the State's Motion; Collective Exhibit 1 to Affidavit of Angie Smith-Wright, attached as Exhibit G to the State's Motion; Collective Exhibit 2 to Affidavit of Gwendolyn Stewart-Jeffrey, attached as Exhibit H to the State's Motion; Collective Exhibit 1 to Affidavit of Vernisa Vinson, attached as Exhibit I to the State's Motion; Collective Exhibit 1 to Affidavit of Lassissa Zachary, attached as Exhibit J to the State's Motion; and Collective Exhibit 1 to Affidavit of Angela Zepess, attached as Exhibit K to the State's Motion.

¹⁹ Affidavit of Herbert Coffey ¶ 15, attached as Exhibit F to the State's Motion.

²⁰ Affidavit of Vernisa Vinson ¶¶ 8-9, attached as Exhibit I to the State's Motion; Affidavit of Lassissa Zachary ¶¶ 6-8, attached as Exhibit J to the State's Motion.

remaining amount.²¹ These promissory notes stated that if the consumers did not pay the remaining balance by the due date, the contracts would be “null and void.”²²

Defendant Denise Patrick always seemed to be in a hurry with the consumers and pressured consumers to pay her that day so she could get started right away on saving their homes from foreclosure.²³

One consumer was already receiving free foreclosure counseling from a certified counselor²⁴ but Defendant Denise Patrick, on behalf of the Defendants, told him that Defendants could handle his situation better than the free certified foreclosure counselor and could stop his foreclosure now.²⁵

²¹ Affidavit of Herbert Coffey ¶¶ 9, 12 attached as Exhibit F to the State’s Motion; Affidavit of Angie Smith-Wright ¶ 8, attached as Exhibit G to the State’s Motion; and Affidavit of Vernisa Vinson ¶ 11, attached as Exhibit I to the State’s Motion.

²² Collective Exhibit 1 to Affidavit of Herbert Coffey ¶ 12, attached as Exhibit F to the State’s Motion; Collective Exhibit 1 to Affidavit of Angie Smith-Wright ¶ 17, attached as Exhibit G to the State’s Motion; Collective Exhibit 1 to Affidavit of Vernisa Vinson ¶ 21, attached as Exhibit I to the State’s Motion; Affidavit of Lassissa Zachary ¶¶ 4, 7, 12, 20, attached as Exhibit J to the State’s Motion; and Affidavit of Angela Zepess ¶¶ 9, 20, attached as Exhibit K to the State’s Motion.

²³ Affidavit of Andrea Benson ¶ 9, attached as Exhibit D to the State’s Motion; Affidavit of Walter Bradley ¶¶ 13-14, attached as Exhibit E to the State’s Motion; Affidavit of Herbert Coffey ¶ 8, attached as Exhibit F to the State’s Motion; Affidavit of Angie Smith-Wright ¶¶ 9-10, attached as Exhibit G to the State’s Motion; Affidavit of Vernisa Vinson ¶¶ 8, attached as Exhibit I to the State’s Motion; Affidavit of Lassissa Zachary ¶¶ 5-6, attached as Exhibit J to the State’s Motion; and Affidavit of Angela Zepess ¶ 9, attached as Exhibit K to the State’s Motion.

²⁴ The Tennessee Housing Development Agency, which is authorized by the State of Tennessee, offers a network of certified counselors from whom consumers can obtain free foreclosure counseling. See <http://www.thda.org/foreclosure.html> and <http://www.thda.org/foreclosure/counselors.pdf> (last visited Jan. 5, 2009).

²⁵ Affidavit of Walter Bradley ¶ 9, attached as Exhibit E to the State’s Motion.

Defendant Denise Patrick, on behalf of the Defendants, also pressured consumers to get a copy of her contract, sending some to a local Kinko's to receive it, and then pressured them to sign it that day and return it so that she would have time to get their foreclosures stopped.²⁶

Defendants made consumers sign extensive paperwork.²⁷

In the situations where Defendant Denise Patrick, on behalf of the Defendants, went to the consumer's house for a meeting, she rushed through the paperwork without explaining what the consumer was actually signing.²⁸

In other cases where Defendant Denise Patrick never even met the consumer in person, she would fax over the paperwork without any explanation other than circling "Urgent" on fax cover sheets and instructing consumers to sign by the X and return.²⁹ In all cases, Defendants had marked with an X the places where the consumer was to initial and/or sign the paperwork.³⁰

²⁶ Affidavit of Andrea Benson ¶ 13, attached as Exhibit D to the State's Motion; Affidavit of Walter Bradley ¶ 15, attached as Exhibit E to the State's Motion; Affidavit of Herbert Coffey ¶¶ 10-11, attached as Exhibit F to the State's Motion; Affidavit of Angie Smith-Wright ¶ 12, attached as Exhibit G to the State's Motion; and Affidavit of Angela Zepess ¶¶ 10-11, attached as Exhibit K to the State's Motion.

²⁷ Affidavit of Andrea Benson ¶¶ 13-14, attached as Exhibit D to the State's Motion; Affidavit of Walter Bradley ¶ 15, attached as Exhibit E to the State's Motion; Affidavit of Herbert Coffey ¶¶ 11-12, attached as Exhibit F to the State's Motion; Collective Exhibit 2 to Affidavit of Gwendolyn Stewart-Jeffrey ¶ 12, attached as Exhibit H to the State's Motion; Affidavit of Vernisa Vinson ¶ 9, attached as Exhibit I to the State's Motion; Affidavit of Lassissa Zachary ¶¶ 8-9, attached as Exhibit J to the State's Motion; and Affidavit of Angela Zepess ¶ 14, attached as Exhibit K to the State's Motion.

²⁸ Affidavit of Vernisa Vinson ¶ 9, attached as Exhibit I to the State's Motion; Affidavit of Lassissa Zachary ¶¶ 8-9, attached as Exhibit J to the State's Motion.

²⁹ Exhibit 1 to Affidavit of Walter Bradley, attached as Exhibit E to the State's Motion; Collective Exhibit 1 to Affidavit of Angie Smith-Wright, attached as Exhibit G to the State's Motion.

³⁰ Collective Exhibit 2 to Affidavit of Andrea Benson, attached as Exhibit D to the State's

Defendants' extensive paperwork that they make consumers sign without explanation or much time for review includes a contract for services, an authorization form to grant permission to contact the consumer's mortgage servicer, an Addendum 1 titled "Client Responsibilities During Loss Mitigation Processing," and a "Notice of Right to Cancel."³¹

Defendants attempted to trick consumers with the "Notice of Right to Cancel." Defendants' form notice has a first signature line acknowledging that consumers may cancel their contract within three (3) business days of signing the contract.³² Defendants then included a second signature line at the very bottom of the page under some language purporting to waive

Motion; Exhibits 2 through 8 to Affidavit of Walter Bradley ¶¶ 14-22, attached as Exhibit E to the State's Motion; Collective Exhibit 1 to Affidavit of Herbert Coffey, attached as Exhibit F to the State's Motion; Collective Exhibit 1 to Affidavit of Angie Smith-Wright, attached as Exhibit G to the State's Motion; Collective Exhibit 2 to Affidavit of Gwendolyn Stewart-Jeffrey, attached as Exhibit H to the State's Motion; Collective Exhibit 1 to Affidavit of Vernisa Vinson ¶ 21, attached as Exhibit I to the State's Motion; Collective Exhibit 1 to Affidavit of Lassissa Zachary ¶ 9, attached as Exhibit J to the State's Motion; and Collective Exhibit 1 to Affidavit of Angela Zepess ¶¶ 11, 21, attached as Exhibit K to the State's Motion.

³¹ Collective Exhibit 2 to Affidavit of Andrea Benson ¶ 16, attached as Exhibit D to the State's Motion; Exhibits 2 through 8 to Affidavit of Walter Bradley, attached as Exhibit E to the State's Motion; Collective Exhibit 1 to Affidavit of Herbert Coffey, attached as Exhibit F to the State's Motion; Collective Exhibit 1 to Affidavit of Angie Smith-Wright, attached as Exhibit G to the State's Motion; Collective Exhibit 2 to Affidavit of Gwendolyn Stewart-Jeffrey, attached as Exhibit H to the State's Motion; Collective Exhibit 1 to Affidavit of Vernisa Vinson, attached as Exhibit I to the State's Motion; Collective Exhibit 1 to Affidavit of Lassissa Zachary, attached as Exhibit J to the State's Motion; and Collective Exhibit 1 to Affidavit of Angela Zepess, attached as Exhibit K to the State's Motion.

³² Collective Exhibit 2 to Affidavit of Andrea Benson, attached as Exhibit D to the State's Motion; Exhibits 2 through 8 to Affidavit of Walter Bradley, attached as Exhibit E to the State's Motion; Collective Exhibit 1 to Affidavit of Herbert Coffey, attached as Exhibit F to the State's Motion; Collective Exhibit 1 to Affidavit of Angie Smith-Wright, attached as Exhibit G to the State's Motion; Collective Exhibit 2 to Affidavit of Gwendolyn Stewart-Jeffrey, attached as Exhibit H to the State's Motion; Collective Exhibit 1 to Affidavit of Vernisa Vinson, attached as Exhibit I to the State's Motion; Collective Exhibit 1 to Affidavit of Lassissa Zachary, attached as Exhibit J to the State's Motion; and Collective Exhibit 1 to Affidavit of Angela Zepess, attached as Exhibit K to the State's Motion.

their right to cancel.³³ Defendants deceptively marked only the second signature line regarding waiver for consumers to sign and date.³⁴

In at least one case, Defendants incorrectly dated the deadline of the consumer's right to cancel to be shorter than three (3) business days and fell over a weekend.³⁵

In at least two situations, consumers had not even signed their contract before paying Defendants.³⁶ When these consumers asked for a refund, Defendant Denise Patrick, on behalf of the Defendants, misrepresented that their three day right to cancel had passed even though consumers still had not signed the contract.³⁷ Both of these consumers felt pressured enough to,

³³ Collective Exhibit 2 to Affidavit of Andrea Benson, attached as Exhibit D to the State's Motion; Exhibits 2 through 8 to Affidavit of Walter Bradley, attached as Exhibit E to the State's Motion; Collective Exhibit 1 to Affidavit of Herbert Coffey, attached as Exhibit F to the State's Motion; Collective Exhibit 1 to Affidavit of Angie Smith-Wright, attached as Exhibit G to the State's Motion; Collective Exhibit 2 to Affidavit of Gwendolyn Stewart-Jeffrey, attached as Exhibit H to the State's Motion; Collective Exhibit 1 to Affidavit of Vernisa Vinson, attached as Exhibit I to the State's Motion; Collective Exhibit 1 to Affidavit of Lassissa Zachary, attached as Exhibit J to the State's Motion; and Collective Exhibit 1 to Affidavit of Angela Zepess, attached as Exhibit K to the State's Motion.

³⁴ Collective Exhibit 2 to Affidavit of Andrea Benson, attached as Exhibit D to the State's Motion; Exhibits 2 through 8 to Affidavit of Walter Bradley, attached as Exhibit E to the State's Motion; Collective Exhibit 1 to Affidavit of Herbert Coffey, attached as Exhibit F to the State's Motion; Collective Exhibit 1 to Affidavit of Angie Smith-Wright, attached as Exhibit G to the State's Motion; Collective Exhibit 2 to Affidavit of Gwendolyn Stewart-Jeffrey, attached as Exhibit H to the State's Motion; Collective Exhibit 1 to Affidavit of Vernisa Vinson ¶ 21, attached as Exhibit I to the State's Motion; Collective Exhibit 1 to Affidavit of Lassissa Zachary ¶ 9, attached as Exhibit J to the State's Motion; and Collective Exhibit 1 to Affidavit of Angela Zepess ¶¶ 11, 21, attached as Exhibit K to the State's Motion.

³⁵ Collective Exhibit 1 to Affidavit of Angie Smith-Wright ¶ 16, attached as Exhibit G to the State's Motion.

³⁶ Affidavit of Angie Smith-Wright ¶¶ 9-10, attached as Exhibit G to the State's Motion; Affidavit of Angela Zepess ¶¶ 9-11, attached as Exhibit K to the State's Motion.

³⁷ Affidavit of Angie Smith-Wright ¶ 15, attached as Exhibit G to the State's Motion; Affidavit

sign the contract several days later in the hope that Defendants would at least perform the foreclosure rescue services promised for them if they were not going to receive a refund.³⁸

In some cases, after having more time to review the contracts they had to sign or learning that Defendants did not appear to be performing the promised services, consumers decided they wanted to cancel and request refunds.³⁹

Some consumers contacted Defendants within three (3) business days of signing their contracts yet Defendants wrongfully refused to refund any money.⁴⁰

Some consumers contacted Defendants asking for a refund before even signing the contract but Defendants refused to refund any money.⁴¹

When consumers contacted Defendants to cancel their contracts and/or ask for full refunds for lack of services rendered, Defendants then surprised consumers by telling them that the one monthly mortgage payment amounts and the \$300.00 “service fees” were all going to

of Angela Zepess ¶¶ 11, 14, attached as Exhibit K to the State’s Motion.

³⁸ Affidavit of Angie Smith-Wright ¶ 16, attached as Exhibit G to the State’s Motion; Affidavit of Angela Zepess ¶ 14, attached as Exhibit K to the State’s Motion.

³⁹ Affidavit of Walter Bradley ¶¶ 24-26, attached as Exhibit E to the State’s Motion; Affidavit of Angie Smith-Wright ¶ 15 attached as Exhibit G to the State’s Motion; Affidavit of Vernisa Vinson ¶¶ 14, 19, attached as Exhibit I to the State’s Motion; Affidavit of Lassissa Zachary ¶ 14, attached as Exhibit J to the State’s Motion; and Affidavit of Angela Zepess ¶ 11, attached as Exhibit K to the State’s Motion.

⁴⁰ Affidavit of Walter Bradley ¶¶ 25-28, Exhibit 8, and Collective Exhibit 9, attached as Exhibit E to the State’s Motion; Affidavit of Angie Smith-Wright ¶¶ 15-16, attached as Exhibit G to the State’s Motion; Affidavit of Vernisa Vinson ¶¶ 14, 19, attached as Exhibit I to the State’s Motion; and Affidavit of Angela Zepess ¶¶ 11, 20, attached as Exhibit K to the State’s Motion.

⁴¹ Affidavit of Angie Smith-Wright ¶¶ 15-16, attached as Exhibit G to the State’s Motion; Affidavit of Angela Zepess ¶ 11, attached as Exhibit K to the State’s Motion.

Defendants' services.⁴²

Defendant Denise Patrick, on behalf of the Defendants, often changed her fees at this time and for the first time told consumers that she charged \$200.00 an hour for her services and had already fully expended all of the money paid to her.⁴³

Defendants also for the first time informed consumers that they had purportedly signed a waiver of their right to cancel.⁴⁴

Defendants incorrectly refused to refund any and all money paid to them to consumers.⁴⁵

Some consumers later found out from their mortgage servicers that Defendants did not forward their mortgage payment to their respective mortgage servicers as the consumers understood would occur but instead Defendants wrongfully pocketed it for themselves.⁴⁶

⁴² Affidavit of Andrea Benson ¶¶ 22-23, attached as Exhibit D to the State's Motion; Affidavit of Herbert Coffey ¶ 17, attached as Exhibit F to the State's Motion; Affidavit of Angie Smith-Wright ¶ 24, attached as Exhibit G to the State's Motion; Affidavit of Gwendolyn Stewart-Jeffrey ¶ 22, attached as Exhibit H to the State's Motion; and Affidavit of Angela Zepess ¶ 20, attached as Exhibit K to the State's Motion.

⁴³ Affidavit of Herbert Coffey ¶ 17, attached as Exhibit F to the State's Motion; Affidavit of Angie Smith-Wright ¶ 24, attached as Exhibit G to the State's Motion.

⁴⁴ Affidavit of Walter Bradley ¶¶ 26, 29, attached as Exhibit E to the State's Motion; Affidavit of Angie Smith-Wright ¶ 15, attached as Exhibit G to the State's Motion; Affidavit of Vernisa Vinson ¶ 17, attached as Exhibit I to the State's Motion.

⁴⁵ Affidavit of Andrea Benson ¶ 26, attached as Exhibit D to the State's Motion; Affidavit of Walter Bradley ¶ 26, attached as Exhibit E to the State's Motion; Affidavit of Herbert Coffey ¶¶ 17, 19, attached as Exhibit F to the State's Motion; Affidavit of Angie Smith-Wright ¶¶ 15, 24, attached as Exhibit G to the State's Motion; Affidavit of Gwendolyn Stewart-Jeffrey ¶¶ 22-23, attached as Exhibit H to the State's Motion; Affidavit of Vernisa Vinson ¶¶ 14, 17, 19, attached as Exhibit I to the State's Motion; Affidavit of Lassissa Zachary ¶ 14, attached as Exhibit J to the State's Motion; and Affidavit of Angela Zepess ¶¶ 11, 19, 20, attached as Exhibit K to the State's Motion.

⁴⁶ Affidavit of Andrea Benson ¶ 22, attached as Exhibit D to the State's Motion; Affidavit of

In some cases, consumers were shocked to learn from their mortgage servicers that Defendants had never even contacted them on the consumer's behalf.⁴⁷

Defendant Denise Patrick, on behalf of the Defendants, instructed consumers to not contact their mortgage servicer because it would mess up Defendants' negotiations.⁴⁸

In at least one case, Defendant Denise Patrick, on behalf of the Defendants, lied to the consumer about her mortgage servicer's alleged proposed loan modification plan which would have been too much for the consumer to pay anyway.⁴⁹ When the consumer later contacted the mortgage servicer directly, she was told that the mortgage servicer did not negotiate at all with Defendants about her situation.⁵⁰

In some cases, Defendant Denise Patrick, on behalf of the Defendants, gave legal advice to consumers by advising them to either file for bankruptcy or not file for bankruptcy.⁵¹ Several consumers even believed that Defendant Denise Patrick was an attorney based on the way that she spoke to them when promising to perform these foreclosure rescue services.⁵²

Herbert Coffey ¶ 17, attached as Exhibit F to the State's Motion.

⁴⁷ Affidavit of Andrea Benson ¶ 22, attached as Exhibit D to the State's Motion; Affidavit of Herbert Coffey ¶ 18, attached as Exhibit F to the State's Motion; Affidavit of Angie Smith-Wright ¶¶ 13, 21, attached as Exhibit G to the State's Motion; and Affidavit of Vernisa Vinson ¶ 12, attached as Exhibit I to the State's Motion.

⁴⁸ Affidavit of Andrea Benson ¶ 15, attached as Exhibit D to the State's Motion.

⁴⁹ *Id.* ¶ 17.

⁵⁰ *Id.* ¶ 22.

⁵¹ Affidavit of Andrea Benson ¶ 18, attached as Exhibit D to the State's Motion; Affidavit of Gwendolyn Stewart-Jeffrey ¶¶ 18-19, attached as Exhibit H to the State's Motion; Affidavit of Vernisa Vinson ¶ 7, attached as Exhibit I to the State's Motion.

⁵² Affidavit of Walter Bradley ¶ 8, attached as Exhibit E to the State's Motion; Affidavit of

In some cases, after leading consumers to believe that she could stop the foreclosures on their homes and accepting money to perform these services, Defendant Denise Patrick, on behalf of the Defendants, later told these consumers that she was unable to help them and referred some of them to certain attorneys.⁵³ Denise Patrick, on behalf of the Defendants, did not refund to these consumers the money that she accepted for these services that she promised and then failed to perform.⁵⁴

Defendant Denise Patrick, on behalf of the Defendants, even admitted to one consumer that she had not contacted the consumer's mortgage company after a couple of weeks since the consumer's first payment but still refused to refund the consumer's money when a refund was requested.⁵⁵

Some consumers lost their homes to foreclosure as a result of Defendants' failure to perform the promised foreclosure rescue services.⁵⁶

At least one consumer had to pay an attorney to fix their foreclosure situations that

Angela Zepess ¶ 12, attached as Exhibit K to the State's Motion.

⁵³ Affidavit of Andrea Benson ¶ 18, attached as Exhibit D to the State's Motion; Affidavit of Herbert Coffey ¶ 16, attached as Exhibit F to the State's Motion; Affidavit of Gwendolyn Stewart-Jeffrey ¶¶ 18-20, attached as Exhibit H to the State's Motion; Affidavit of Lassissa Zachary ¶ 15, attached as Exhibit J to the State's Motion.

⁵⁴ Affidavit of Andrea Benson ¶¶ 22-23, attached as Exhibit D to the State's Motion; Affidavit of Herbert Coffey ¶ 17, attached as Exhibit F to the State's Motion; Affidavit of Gwendolyn Stewart-Jeffrey ¶¶ 22-23, attached as Exhibit H to the State's Motion; Affidavit of Lassissa Zachary ¶ 14, attached as Exhibit J to the State's Motion.

⁵⁵ Affidavit of Angie Smith-Wright ¶¶ 23-24, attached as Exhibit G to the State's Motion.

⁵⁶ Affidavit of Andrea Benson ¶ 21, attached as Exhibit D to the State's Motion; Affidavit of Herbert Coffey ¶ 20, attached as Exhibit F to the State's Motion; Affidavit of Gwendolyn Stewart-Jeffrey ¶¶ 13, 16, 21, attached as Exhibit H to the State's Motion.

Defendants had not helped and had made worse.⁵⁷

Some consumers regrettably had to file bankruptcy to save their homes from foreclosure after Defendants failed to provide the promised foreclosure rescue services.⁵⁸

At least two consumers found out that Defendants had not performed any substantive work on their behalf but they were fortunately able to stop the foreclosure by working directly with the mortgage company.⁵⁹

One consumer owned several properties which Defendant Denise Patrick, on behalf of the Defendants, promised to save from foreclosure because she said that there was a Tennessee law requiring mortgage companies to work with consumers if they are behind on their mortgages.⁶⁰ The consumer then found out that one of the homes had already been foreclosed on but Defendant Denise Patrick seemed to be unaware despite claiming to have been in contact with the mortgage company.⁶¹ After paying Defendants to save the other two houses, Defendants failed to save the second house.⁶² Defendant Denise Patrick, on behalf of the Defendants, then advised the consumer to file bankruptcy to save the third house and referred the

⁵⁷ Affidavit of Gwendolyn Stewart-Jeffrey ¶ 21, attached as Exhibit H to the State's Motion.

⁵⁸ Affidavit of Vernisa Vinson ¶ 18, attached as Exhibit I to the State's Motion; Affidavit of Angela Zepess ¶ 18, attached as Exhibit K to the State's Motion.

⁵⁹ Affidavit of Angie Smith-Wright ¶¶ 21-22, attached as Exhibit G to the State's Motion; Affidavit of Lassissa Zachary ¶ 18, attached as Exhibit J to the State's Motion.

⁶⁰ Affidavit of Gwendolyn Stewart-Jeffrey ¶ 10, attached as Exhibit H to the State's Motion.

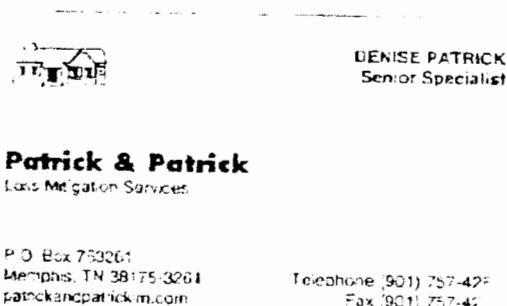
⁶¹ *Id.* ¶ 13.

⁶² *Id.* ¶¶ 14, 16.

consumer to a bankruptcy attorney.⁶³ This third house was foreclosed upon but the attorney worked out a deal to keep the consumer living in her house.⁶⁴

At all times relevant to this Statement of Facts, Defendant Denise Patrick has actively participated in the acts and practices at issue in this Complaint including the unfair and deceptive conduct alleged herein and/or has had the authority and/or control to stop Defendants' violations of the law.⁶⁵

Defendant Denise Patrick has also promoted Defendants' services by use of the following business card with the title "Senior Specialist" under her name and the company name of "Patrick & Patrick Loss Mitigation Services":⁶⁶



⁶³ *Id.* ¶ 18.

⁶⁴ *Id.* ¶ 21.

⁶⁵ Affidavit of Andrea Benson, attached as Exhibit D to the State's Motion; Affidavit of Walter Bradley, attached as Exhibit E to the State's Motion; Affidavit of Herbert Coffey, attached as Exhibit F to the State's Motion; Affidavit of Angie Smith-Wright, attached as Exhibit G to the State's Motion; Affidavit of Gwendolyn Stewart-Jeffrey, attached as Exhibit H to the State's Motion; Affidavit of Vernisa Vinson, attached as Exhibit I to the State's Motion; Affidavit of Lassissa Zachary, attached as Exhibit J to the State's Motion; and Affidavit of Angela Zepess, attached as Exhibit K to the State's Motion.

⁶⁶ Collective Exhibit 1 to Affidavit of Andrea Benson, attached as Exhibit D to the State's Motion; Exhibit 3 to Affidavit of Lassissa Zachary, attached as Exhibit J to the State's Motion.

52. Defendants promote their foreclosure rescue services via the Internet at www.patrickandpatricklm.com.⁶⁷

Defendants promote their foreclosure rescue service on the home page of www.patrickandpatricklm.com which states the following:⁶⁸

Welcome to Patrick & Patrick Loss Mitigation Services, and thank you for visiting our website. Patrick & Patrick Loss Mitigation Services is a Tennessee corporation specializing in providing foreclosure assistance to homeowners in need of assistance to stop the foreclosure process on their home.

Our company specializes in out-of-court resolutions of mortgage foreclosures, by negotiating with your lender. These mortgages include Conventional and Non-Conventional Loans including VA, FHA, Freddie Mac, Fannie Mae, and Rural Administration Loans. Avoiding Foreclosure is possible if you **contact us** before it is too late. Our Loss Mitigation foreclosure services efforts will make this time less stressful for you.

We specialize in out-of-court resolutions of mortgage foreclosures by negotiating with your lender. If you want to get out of Foreclosure, we can negotiate with your lender to Avoid Foreclosure or Stop Foreclosure and get you back on track. The longer you wait to make a decision, the harder it will be to stop the foreclosure. Another service we offer is credit restoration, this department would work with the home owner to bring there credit score up so they can refinance at a lower interest rate. You must act quickly! If you do nothing, you will lose your home and your credit record will be devastated.

On this site, you will find valuable information about the products and services we offer, as well as how best to contact a member of our team. Please take a few moments to browse our web site and learn a little bit more about us.

In our business, Quality and Customer Service are our first priority. We emphasize the importance of servicing our customers at all levels of our organization. Our goal is to make your experience with our company both positive and rewarding.

STOP FORECLOSURE FAST!

⁶⁷ Exhibit I to Affidavit of James Kempvane, attached as Exhibit C to the State's Motion; Exhibit 4 to Affidavit of Lassissa Zachary ¶ 19, attached as Exhibit J to the State's Motion.

⁶⁸ Exhibit I to Affidavit of James Kempvane, attached as Exhibit C to the State's Motion.

Foreclosure may occur. This is the legal means that your lender can use to repossess (take over) your home. When this happens, you must move out of your house. If your property is worth less than the total amount you owe on your mortgage loan, a deficiency judgment could be pursued. If that happens, you not only lose your home, you also would owe HUD an additional amount.

Both foreclosures and deficiency judgments could seriously affect your ability to qualify for credit in the future. So you should avoid foreclosure if possible.

Avoid Foreclosure Let Us help You Keep your Home!
1-866-303-4808

Defendants also promote their foreclosure rescue services and alleged experience on the “About Us” page of www.patrickandpatricklm which states the following:⁶⁹

About Us

We have 15 years experience in assisting people in bringing their mortgage payments up to date. We provide counseling services as a community service to homeowners in the Tennessee area for the following type loans-privately held mortgages, conventional, FHA, VA, FmHA and VHDA guaranteed mortgages. We work with all major mortgage lenders in the United States. We specialize in stopping foreclosures. When we identify clients who are experiencing difficulty meeting their mortgage obligations we work with them to determine feasible solutions to allow both the note holder to be satisfied and the client to keep their most important investment-their home.

The criteria is simple, they must be 2 months or more behind on their mortgage. They must be receiving income whether from employment or social service payments, does not matter. They must be able to demonstrate that they can resume their mortgage payments or new payments once the mortgage delinquency has been paid.

If you have any questions, please feel free to call us at (901) 757-4266 or call our toll free number at 866-303-4808.

Sincerely,

Denise Patrick

Defendants have also offered a credit services business as an “Independent VRMTG

⁶⁹ *Id.*

Agent” of VRTech Marketing Group, LLC, via the Internet website,
<http://www.vrtechmarketinggroup.com/dpatrick>.⁷⁰

Defendant Sondrette D. Patrick a/k/a Denise Patrick is not registered to provide credit services in the State of Tennessee.⁷¹

Defendant Patrick & Patrick is not registered to provide credit services in the State of Tennessee.⁷²

VRTech Marketing Group, LLC is not registered to provide credit services in the State of Tennessee.⁷³

Defendant Denise Patrick is not an attorney nor licensed to practice law in the State of Tennessee.⁷⁴

To the best of the State’s knowledge, Defendants and their employees were not certified to provide either foreclosure or debt counseling during times relevant to the State’s Complaint.

Defendants failed to disclose, either at all or clearly and conspicuously, that their foreclosure rescue services cost a fee on their website, www.patrickandpatricklm.com.⁷⁵

Defendants failed to disclose, either at all or clearly and conspicuously, that free certified foreclosure counselors are available to consumers through various organizations listed on the

⁷⁰ Exhibit 1 to Affidavit of James Kempvane, attached as Exhibit C to the State’s Motion.

⁷¹ Affidavit of Mary Clement ¶ 3, attached as Exhibit A to the State’s Motion.

⁷² *Id.* ¶ 4.

⁷³ *Id.* ¶ 5.

⁷⁴ Affidavit of Adele Anderson, attached as Exhibit B to the State’s Motion.

⁷⁵ Exhibit 1 to Affidavit of James Kempvane, attached as Exhibit C to the State’s Motion.

Tennessee Housing Development Agency's website, www.thda.org.

Defendants failed to assist some consumers in preventing foreclosures or their homes despite representations that they could in fact prevent foreclosures and after accepting a fee for their promised foreclosure rescue services.⁷⁶

ARGUMENT

I. DEFENDANTS' ACTS AND PRACTICES VIOLATE THE TENNESSEE CONSUMER PROTECTION ACT OF 1977.

The Tennessee Consumer Protection Act of 1977 ("TCPA" or "Act")⁷⁷ is Tennessee's version of a "Little FTC Act."⁷⁸ The model for the TCPA was developed by the Federal Trade Commission in conjunction with the Committee on Suggested State Legislation of the Council of State Governments and is patterned after Alternative # 3 of the Unfair Trade Practices and Consumer Protection Law.⁷⁹ The TCPA has two main operative provisions: § 104(a) prohibits

⁷⁶ Affidavit of Andrea Benson, attached as Exhibit D to the State's Motion; Affidavit of Walter Bradley, attached as Exhibit E to the State's Motion; Affidavit of Herbert Coffey, attached as Exhibit F to the State's Motion; Affidavit of Angie Smith-Wright, attached as Exhibit G to the State's Motion; Affidavit of Gwendolyn Stewart-Jeffrey, attached as Exhibit H to the State's Motion; Affidavit of Vernisa Vinson, attached as Exhibit I to the State's Motion; Affidavit of Lassissa Zachary, attached as Exhibit J to the State's Motion; and Affidavit of Angela Zepess, attached as Exhibit K to the State's Motion.

⁷⁷ Tenn. Code Ann. § 47-18-101 *et seq.*

⁷⁸ "The little FTC Acts were so designated because of their similarity to the provision of the Federal Trade Commission Act that outlaws unfair or deceptive trade practices." *Tucker v. Sierra Builders, Inc.*, 180 S.W.3d 109, 114 (Tenn. Ct. App. 2005).

⁷⁹ See Council of State Governments, 1970 Suggested State Legislation, Unfair Trade Practices and Consumer Protection Law - Revision (Vol. XXIX), Clearinghouse No. 31, 035 B, Compendium of Unreported and Out-of-State Decisions, filed herewith. See also D. Pridgen, *Consumer Protection and the Law*, § 3:5 (2002).

“[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce,”⁸⁰ and § 104(b) develops categories of thirty-six prohibited acts and practices which constitute *per se* deception under the Act.⁸¹ Furthermore, the Act reaches conduct that is not placed into these statutory categories.

The TCPA was not intended to be a codification of the common law and its scope is much broader than that of common-law fraud:⁸²

To the contrary, one of the express purposes of the TCPA is to provide additional supplementary state law remedies to consumers victimized by unfair or deceptive business acts or practices that were committed in Tennessee in whole or in part.⁸³

Through the TCPA, the State can better protect the public against business practices that harm consumers and damage the integrity of the marketplace. Under the TCPA, recovery can be obtained without having to meet the burden of proof that is required in a common law fraud case, and the numerous defenses that are available to a defendant in a common law fraud case are simply not available to a defendant in a TCPA case.⁸⁴ An act or practice can be deceptive even if there is no intent to deceive,⁸⁵ knowledge of the deception,⁸⁶ or reliance.⁸⁷ Negligent

⁸⁰ Tenn. Code Ann. § 47-18-104(a).

⁸¹ Tenn. Code Ann. § 47-18-104(b).

⁸² *Tucker*, 180 S.W.3d 109 at 115.

⁸³ *Id.* (citing Tenn. Code Ann. § 47-18-102(2) and (4)).

⁸⁴ *Tucker*, 180 S.W.3d at 115 (citing *Smith v. Baldwin*, 611 S.W.2d 611, 616 (Tex. 1980)).

⁸⁵ *Smith v. Scott Lewis Chevrolet, Inc.*, 843 S.W.2d 9, 12-13 (Tenn. Ct. App. 1992); *FTC v. Algoma Lumber Co.*, 291 U.S. 67, 81 (1934); *Doherty, Clifford, Steers & Shenfield, Inc. v. FTC*, 392 F.2d 921, 925 (6th Cir. 1968).

⁸⁶ *Smith*, 843 S.W.2d at 12-13.

misrepresentations can violate the statute⁸⁸ and the State does not need to prove that any consumer was actually misled or deceived in order to prove that a violation of law has occurred.⁸⁹

The TCPA is a remedial statute⁹⁰ which must be “liberally construed to . . . protect consumers and legitimate business enterprises from those who engage in deceptive acts or practices.”⁹¹ The TCPA provides for a private right of action⁹² and also vests civil enforcement authority with the Attorney General and the Division of Consumer Affairs.⁹³ In enacting the TCPA, the General Assembly intended to promote the policy of “maintaining ethical standards of dealing between persons engaged in business and the consuming public to the end that good faith dealings between buyers and sellers at all levels be had in [Tennessee].”⁹⁴

Aside from the categories which identify conduct as *per se* deceptive, the TCPA does not

⁸⁷ *Harvey v. Ford Motor Credit Co.*, No. 03A01-9807-CV-00235, 1999 WL 486894, at *2 (Tenn. Ct. App. July 13, 1999).

⁸⁸ *Smith*, 843 S.W.2d at 13.

⁸⁹ *Tucker*, 180 S.W.3d at 115.

⁹⁰ *Tucker*, 180 S.W.3d at 115 (citing Tenn. Code Ann. § 47-18-115); *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 925 (Tenn. 1998); *Morris v. Mack Used Cars*, 824 S.W.2d 538, 540 (Tenn. 1992).

⁹¹ Tenn. Code Ann. § 47-18-102(2); *Ganzevoort v. Russell*, 949 S.W.2d 293, 297 (Tenn. 1997); *Morris*, 824 S.W.2d at 540 (quoting *Haverlah v. Memphis Aviation, Inc.*, 674 S.W.2d 297, 305 (Tenn. Ct. App. 1984)).

⁹² Tenn. Code Ann. § 47-18-109.

⁹³ Tenn. Code Ann. §§ 47-18-106 to 108.

⁹⁴ Tenn. Code Ann. § 47-18-102(4).

define “unfair” or “deceptive.”⁹⁵ In order to give the broadest scope possible to the protections embodied in the statute and in order to prevent ease of evasion because of overly meticulous definitions, consumer protection laws like the TCPA typically make no attempt to define “unfair” or “deceptive,” but merely declare that such acts or practices are unlawful, thus leaving it to the court in each particular case to determine whether there has been a violation of the statute.⁹⁶

Deception

Section 115 of the TCPA directs the TCPA to be interpreted “consistently with the interpretations given by the Federal Trade Commission and the federal courts pursuant to §5(A)(1) of the Federal Trade Commission Act.”⁹⁷ Federal Trade Commission case law currently holds that an act or practice is deceptive if it is “likely to deceive.”⁹⁸ The Court of Appeals in *Tucker v. Sierra Builders*⁹⁹ has looked to this definition, in holding that under the TCPA, deception is conduct that “causes or tends to cause a consumer to believe what is false, or

⁹⁵ See Tenn. Code Ann. § 47-18-103. See also *Tucker*, 180 S.W.3d at 115.

⁹⁶ D. Zupanec, *Practices Forbidden by State Deceptive Trade Practice and Consumer Protection Acts*, 89 ALR 3d 449, 458 (1979). See also *Tucker*, 180 S.W.3d at 114; *Pan American World Airways v. United States*, 371 U.S. 296, 307-08 (1963).

⁹⁷ Tenn. Code Ann. § 47-18-115. See also *Tucker*, 180 S.W.3d at 115; *Ganzevoort v. Russell*, 949 S.W.2d at 298.

⁹⁸ *FTC v. Consumer Alliance, Inc.*, No. 02C 2429, 2003 WL 22287364 at *4 (N.D. Ill. Sept. 30, 2003); *FTC v. Gill*, 71 F.Supp.2d 1030, 1037 (C.D. Cal. 1999), *aff'd*, 265 F.3d 944 (9th Cir. 2001). Earlier FTC case law referred to a “tendency” or “capacity” to deceive standard, *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965); *FTC v. Algoma Lumber Co.*, 291 U.S. at 81.

⁹⁹ *Tucker*, 180 S.W.3d at 109.

that misleads or tends to mislead a consumer as to a matter of fact.”¹⁰⁰ Thus, the State need not prove that any consumer was actually misled or deceived - only that defendants’ conduct has a “tendency” to mislead or deceive.¹⁰¹

Unfairness

The unfairness definition set forth by the FTC was also adopted in *Tucker v. Sierra Builders*.¹⁰² The court followed the FTC policy statement on unfairness¹⁰³ and defined unfairness as an act or practice that “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”¹⁰⁴

Consumer injury will be deemed substantial “if a relatively small harm is inflicted on a large number of consumers or if a greater harm is inflicted on a relatively small number of consumers.”¹⁰⁵ Substantial injury “must be more than trivial or speculative.”¹⁰⁶ “Consumers cannot reasonably avoid injury when a merchant’s sales practices unreasonably create or take advantage of an obstacle to the free exercise of consumer decision-making.”¹⁰⁷ “Practices that

¹⁰⁰ *Id.* at 115.

¹⁰¹ *Id.* See also *Williams v. Bruno Appliance and Furniture Mart*, 379 N.E.2d 52, 54 (Ill. App. Ct. 1978).

¹⁰² *Tucker*, 180 S.W.3d at 116-17.

¹⁰³ 15 U.S.C.A. § 45(n).

¹⁰⁴ *Tucker*, 180 S.W.3d at 116 (quoting 15 U.S.C.A. § 45(n)).

¹⁰⁵ *Tucker*, 180 S.W.3d at 116 (citing *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1365 (11th Cir. 1988)).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

unreasonably interfere with consumer decision-making include (1) withholding important information from consumers, (2) overt coercion, or (3) exercising undue influence over a highly susceptible class of consumers.”¹⁰⁸

The Complaint, the Temporary Injunction Motion, and attached Affidavits and Exhibits allege and provide evidentiary support for a myriad of separate and discrete acts and practices employed by the Defendants which constitute “unfair” *and* “deceptive” conduct under well-settled federal law and the TCPA.¹⁰⁹ Most individual consumer transactions evidence a combination of several unlawful acts and practices and almost always involve false advertising - conduct that readily qualifies as “unfair” and “deceptive.”

The facts indicate Defendants have falsely represented that Defendants are able to stop foreclosures for consumers. Defendants also misrepresent that their fees are just a “service fee”, not both the \$300.00 “service fee” and the equivalent of one month’s mortgage payment. Defendants also deceived consumers by not explaining the terms of the contract and rushing consumers to pay and sign it, and then using those unfair and deceptive terms as an excuse not to refund consumers money even though no or little services were provided. When Defendants ultimately fail to provide the promised services, namely to prevent the consumers’ houses from being foreclosed upon, Defendants then unfairly and unlawfully refuse to refund any of the money paid by consumers to Defendants for those services.

Furthermore, by engaging in home solicitations of Defendants’ foreclosure rescue services and not complying with the statutory requirements regarding the buyer’s right to cancel

¹⁰⁸ *Id.*

¹⁰⁹ Tenn. Code Ann. § 104(a) and (b).

a contract and obtain a refund, Defendants have violated the Tennessee Home Solicitation Sales Act of 1974, Tenn. Code Ann. § 47-18- 701 *et seq.*, which Plaintiff alleges constitutes violations of the Tennessee Consumer Protection Act.

Moreover, Defendants have engaged in the offering of credit services businesses in the State of Tennessee without first registering a bond consistent with the provisions of Tenn. Code Ann. § 47-18-1011.¹¹⁰ Pursuant to Tenn. Code Ann. § 47-18-1010(a), all of the violations of the Tennessee Credit Services Businesses Act alleged in the State's Complaint constitute violations of the Tennessee Consumer Protection Act.

II. DEFENDANTS HAVE ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW.

The Tennessee UPL statutes prohibit persons from engaging in “law business” unless the person is duly licensed to practice law.¹¹¹

Tenn. Code Ann. § 23-3-101(1) defines “law business” as:

the advising or counseling for valuable consideration of any person as to any secular law, or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document, or instrument affecting or relating to secular rights, or the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to secure for any person any property or property rights whatsoever, or the soliciting of clients directly or indirectly to provide such services.

The Tennessee Supreme Court, which is the final arbiter regarding unauthorized practice of law issues, has held that the conduct described in the statutory definition of “law business,” “if performed by a non-attorney[,] constitute[s] the unauthorized practice of law only if the doing of

¹¹⁰ Affidavit of Mary Clement, attached as Exhibit A to the State's Motion; Affidavit of James Kempvane, attached as Exhibit C to the State's Motion.

¹¹¹ Tenn. Code Ann. § 23-3-101 *et seq.*

those acts requires the ‘professional judgment of a lawyer.’”¹¹² Whether conduct constitutes the unauthorized practice of law thus depends upon the particular facts of each case.

Additionally, Defendants are engaged in “law business” by advising or counseling consumers for a valuable consideration regarding secular laws. Defendants have advised some consumers who paid a “service fee” either to file or not to file bankruptcy. The foreclosure assistance process is very complicated legal process and the consequences of mistakes are great. By giving the wrong advice, consumers could face very serious consequences such as losing their homes which may have been saved through a loan modification worked out with their lenders by certified counselors. Determining whether another person should file bankruptcy in their situation to halt a foreclosure requires the professional judgment of a lawyer.

III. THE TEMPORARY INJUNCTION REQUESTED BY THE STATE IS APPROPRIATE UNDER TENN. CODE ANN. §§ 23-3-103(c)(1) and (c)(3), and 47-18-108(a)(1) and (a)(4).

A. This Court Has the Authority to Grant the Requested Relief

The Attorney General of Tennessee has broad statutory and common law authority with respect to protecting the public.¹¹³ The Tennessee Supreme Court has held that “[a]s the chief law enforcement officer of the state, the attorney general may exercise such authority as the public interest may require and may file suits necessary for the enforcement of state laws and public protection.”¹¹⁴

¹¹² *In re Petition of Burson*, 909 S.W.2d 768, 776 (Tenn. 1995).

¹¹³ Tenn. Code Ann. § 8-6-109(b)(1). *State ex rel. Inman v. Brock*, 622 S.W.2d 36, 41 (Tenn. 1981); *State v. Heath*, 806 S.W.2d 535, 537 (Tenn. Ct. App. 1991).

¹¹⁴ *State v. Heath*, 806 S.W.2d at 537.

Section 108 of the TCPA authorizes the Attorney General to bring an action, including a temporary injunction, in the name of the State whenever there is reason to believe a person has engaged in or is engaging in any act or practice declared unlawful by this part and the action is in the public interest.¹¹⁵

Likewise, the UPL statutes authorize the Attorney General to bring an action in the name of the State to restrain by temporary restraining order, temporary injunction, or permanent injunction any violation of this part. . . .¹¹⁶

In cases such as this one, where a law enforcement authority acts as a “statutory guardian charged with safeguarding the public interest,” the standard for a temporary injunction is lower than the standard applied to private litigants.¹¹⁷ The authorization to the Attorney General to seek injunctive and other equitable relief constitutes the legislative determination that an irreparable injury has already occurred in any violation of the Act.¹¹⁸ “Unlike private actions,

¹¹⁵ Tenn. Code Ann. § 47-18-108(a)(1).

¹¹⁶ Tenn. Code Ann. § 23-3-103(c)(1).

¹¹⁷ *State v. Virula*, No. 08C651, at 2, Cir. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part I (Mar. 18, 2008); *State v. ExpyFi*, No. 07C3365, at 2, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Nov. 21, 2007); *State v. Froehlig*, No. 33293, at 2, Ch. Ct. Of Tenn., 21st Jud. Dist., Williamson County (Mar. 2, 2007); *State v. Olomoshua*, No. 06C2912, at 2, Cir. Ct. of Tenn., 20th Jud. Dist, Davidson County, Part III (Nov. 14, 2006); *Tennessee Real Estate Comm'n v. Hamilton*, No. 96-3330-III, at 6, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Dec. 1996), *aff'd*, No. 01A01-9707-CH-00320, 1998 WL 272788 at *4-6 (Tenn. Ct. App. May 22, 1998); *FTC v. Nat'l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634 (M.D. Tenn. Aug. 18, 2005); *Microsoft Corp. v. Action Software*, 136 F.Supp. 2d 735, 738-39 (N.D. Ohio 2001); *see also The Virginia Beach SPCA, Inc. v. South Hampton Roads Veterinary Ass'n.*, 329 S.E.2d 10, 13 (Va. 1985); *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2nd Cir. 1975); *FTC v. World Wide Factors*, 882 F.2d 344, 346 (9th Cir. 1989); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988).

¹¹⁸ 11 Wright & Miller, *Federal Practice and Procedure*, 461-62 (1973).

which are rooted in the equity jurisdiction of the courts, in suits based upon statutory authority, proof of irreparable harm or the inadequacy of other remedies is not required.”¹¹⁹ The U.S. District Court for the Middle District of Tennessee has also held, “[w]here a government entity demonstrates a substantial showing of a violation of a statute, such violation is sufficient to establish immediate and irreparable harm.”¹²⁰ Irreparable injury, therefore, need not be shown¹²¹ and harm to the public is presumed.¹²² “The standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief.”¹²³

In the ordinary case, traditional equitable injunctions require that the trial judge’s discretion balance four factors which are not prerequisites to be met.¹²⁴ The most common

¹¹⁹ *Nat'l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *3 (M.D. Tenn. Aug. 18, 2005)(internal citations omitted); see also *State v. Olomoshua, et al*, No. 06C2912, at 2, Cir. Ct. of Tenn., 20th Jud. Dist, Davidson County, Part III (Nov. 14, 2006); *State v. Continental Distributing Co., Inc.*, Ch. Ct. of Tenn., 11th Jud. Dist., Hamilton County (Oct. 7, 1994).

¹²⁰ *Tennessee Real Estate Comm'n v. Hamilton*, No. 96-3330-III, p. 6, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Dec. 1996), *aff'd*, No. 01A01-9707-CH-00320, 1998 WL 272788 at *4-6 (Tenn. Ct. App. May 22, 1998).

¹²¹ *State v. Continental Distributing Co., Inc.*, Ch. Ct of Tenn., 11th Jud. Dist., Hamilton County (Oct. 7, 1994); *SKS Merch., LLC v. Barry*, 233 F.Supp.2d 841, 845 (E.D. Ky. 2002); *FTC v. Int'l Computer Concepts, Inc.*, No. 594CV1678, 1994 WL 730144 at *12 (N.D. Ohio Oct. 24, 1994); *World Travel Vacation Brokers*, 861 F.2d at 1029. see also *People, ex rel. Hartigan v. Stianos*, 475 N.E.2d 1024, 1027-28 (Ill. App. 1985); *State v. Fonk's Mobile Home Park & Sales*, 343 N.W.2d 820, 821 (Wis. App. 1983); *State ex rel Danforth v. Independence Dodge, Inc.*, 494 S.W.2d 362, 370-71 (Mo. App. 1973); *United States v. Sene X Eleemosynary Corp.*, 479 F.Supp. 970, 980-81 (S.D. Fla. 1979).

¹²² *FTC v. Nat'l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *3 (M.D. Tenn. Aug. 18, 2005) (internal citations omitted); see also *Hecht Co. v. Bowles*, 321 U.S. 321, 331 (1944); *World Travel Vacation Brokers*, 861 F.2d at 1029.

¹²³ *Bowles*, 321 U.S. at 331.

¹²⁴ *Frisch's Restaurant, Inc. v. Shoney's, Inc.*, 759 F.2d 1261, 1263 (6th Cir. 1985).

description of the standard for a preliminary injunction in federal and state courts is a four-factor test: (1) the threat of irreparable harm to plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on the defendants; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.¹²⁵

Tenn. R. Civ. P. 65.04 states the standard for the issuance of a temporary injunction is if:

[I]t is clearly shown by a verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment . . . or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.

A case such as this one is especially well-suited for a temporary injunction. Section 108 of the TCPA provides that “whenever the division has reason to believe that any person has engaged in . . . is about to engage in any act or practice declared unlawful by this part and that proceedings would be in the public interest . . .”¹²⁶ “[t]he courts are authorized to issue orders and injunctions to restrain and prevent violations of this part.”¹²⁷ Likewise, Section 103(c)(1) of the UPL statute provides that “(t)he attorney general and reporter may bring an action in the name of the state to restrain by temporary restraining order, temporary injunction, or permanent injunction any violation of this part; . . .,”¹²⁸ and further states “(t)he courts are authorized to

¹²⁵ *South Cent. R.R. Auth. v. Harakas*, 44 S.W.3d 912, 919 (Tenn. Ct. App. 2000), *perm. app. denied* (quoting Banks & Entman, TENNESSEE CIVIL PROCEDURE § 4-3(1) (1999)); *Tesmer v. Granholm*, 333 F.3d 683, 702 (6th Cir. 2003) (reversed on other grounds); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975) (citing only two components: “the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits.”).

¹²⁶ Tenn. Code Ann. § 47-18-108(a)(1).

¹²⁷ Tenn. Code Ann. § 47-18-108(a)(4).

¹²⁸ Tenn. Code Ann. § 23-3-103(c)(1).

issue orders and injunctions to restrain, prevent and remedy violations of this part, the orders and injunctions shall be issued without bond.”¹²⁹ Furthermore, courts have consistently imposed temporary injunctions where, as here, there is evidence of widespread and pervasive deception and unlawful activity.¹³⁰

B. The Evidence Presented Justifies Entry of a Temporary Injunction

1. The State Has Demonstrated a Likelihood of Success on the Merits

As evidenced by the Statement of Facts of this Memorandum and the Affidavits attached as Exhibits A through K to the State’s Motion for a Temporary Injunction, the State has demonstrated a likelihood of success on the merits with regard to its claim arising under the Tennessee Consumer Protection Act, the Tennessee Home Solicitations Act, the Tennessee Credit Services Businesses Act and the UPL statutes.

For purposes of the temporary injunction hearing, Tennessee state courts,¹³¹ federal courts,¹³² and the Tennessee Rules of Civil Procedure¹³³ all allow for the admittance of affidavits over hearsay objections. Tenn. R. Civ. P. 65.04 expressly allows for the use of a “verified

¹²⁹ Tenn. Code Ann. § 23-3-103(c)(3).

¹³⁰ See also *World Travel Vacation Brokers*, 861 F.2d at 1026-28; *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984); *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 907 (7th Cir. 1989); *FTC v. Amy Travel Service*, 875 F.2d 564, 571-72 (7th Cir. 1989); *FTC v. Southwest Sunsites, Inc.*, 665 F.2d 711, 718-19 (5th Cir. 1982).

¹³¹ *Denver Area Meat Cutters and Employers Pension Plan v. Clayton*, 120 S.W.3d 841, 857 (Tenn. Ct. App. 2003).

¹³² See, e.g., *Natl Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *2.

¹³³ Tenn. R. Civ. P. 65.04 (2) (“A temporary injunction may be granted during the pendency of an action if it is clearly shown by *verified complaint, affidavit* or other evidence that the movant’s rights are being or will be violated by an adverse party. . . .”).

complaint, affidavit, or other evidence.” The affidavits and accompanying exhibits to the State’s Motion and Complaint are identical to the verified complaint and the affiant of each affidavit swears or affirms that the facts he or she has stated are the truth or are truthful to the best of his or her knowledge.

2. The Balance of Equities Mandates a Temporary Injunction

The balance of equities mandates temporary injunctive relief. Where, as here, public and private equities are at issue, public equities far outweigh private equities.¹³⁴

Defendants’ past misconduct “gives rise to the inference that there is a reasonable likelihood of future violations.”¹³⁵ Further, Defendants can have no vested interest in a business activity that is unlawful.¹³⁶ Here, without the entry of the proposed temporary injunction, Defendants will likely continue to offer and engage in unfair or deceptive acts or practices related to foreclosure rescue schemes, the unauthorized practice of law, and the improper offering of credit services and violations of the Tennessee Home Solicitations Act.

Past misconduct is “highly suggestive of the likelihood of future violations,” especially where, as here, there is a pattern of unlawful conduct as opposed to an isolated occurrence.¹³⁷ The record establishes that Defendants have routinely falsely promised consumers to save their homes from foreclosure, failed to perform the promised services, and then refused to refund any

¹³⁴ *FTC v. World Wide Factors*, 882 F.2d 344, 347 (9th Cir. 1989).

¹³⁵ *SEC v. R. J. Allen & Assoc., Inc.*, 386 F.Supp. 866, 877 (S.D. Fla. 1974); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979)(“Once a violation is demonstrated, the moving party need only show that there is some reasonable likelihood of future violations.”) (citations omitted).

¹³⁶ *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972).

¹³⁷ *Commodity Futures Trading Comm’n v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979).

monies paid for those services.

IV. AN ASSET FREEZE IS APPROPRIATE IN CONJUNCTION WITH THE STATE'S REQUEST FOR TEMPORARY INJUNCTION.

An asset freeze is essentially a specific type of temporary injunction (or restraining order) involving the Defendants' assets. The standards for imposing a statutory asset freeze in particular have not been well established in Tennessee case law. In the federal system, however, the Middle District of Tennessee has applied the less burdensome standard for statutory injunctions to temporary asset freezes.

Upon consideration of a preliminary injunction that included an asset freeze, the Court in *FTC v. National Testing Services, LLC* stated that proof of irreparable harm or the inadequacy of other remedies is not required.¹³⁸ The Court also stated that it should weigh the equities and consider the government's likelihood of success on the merits.¹³⁹ In cases when the government is a party, when the Court balances the hardships of the public interest against a private interest, the public interest should receive greater weight.¹⁴⁰

At the federal level, in a *private suit* seeking a *non-statutory* asset freeze, the Middle District of Tennessee has applied the traditional Rule 65 standard for private, non-statutory injunctions.¹⁴¹ These factors include: (1) whether the Plaintiff has demonstrated a likelihood of success on the merits, (2) whether there is irreparable harm, (3) whether there would be

¹³⁸ *Nat'l Testing Servs., LLC*, No: 3:05-0613, 2005 WL 2000634, at *3.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Advocate Capital, Inc. v. Law Office of A. Clark Cone, P.A.*, No. 3:06-0847, 2006 WL 3469576 (M.D. Tenn. Nov. 29, 2006).

substantial harm to others, and (4) whether the asset freeze is in the public interest.

While the State submits that its burden is less under a statutory injunction as mentioned above, the State submits that an asset freeze is warranted even under the more burdensome standard applied by the Middle District in *Advocate Capital*.

A. The State Has Shown a Substantial Likelihood of Success on the Merits.

The Sixth Circuit Court of Appeals has held that “[i]n order to establish a likelihood of success on the merits of a claim, a plaintiff must show more than a mere possibility of success.”¹⁴² “However, it is ordinarily sufficient if the plaintiff has raised questions going to the merits so serious, substantial, difficult, and doubtful as to make them fair grounds for litigation and thus for more deliberate investigation.”¹⁴³

By proffering the above Statement of Facts and attached Affidavits and Exhibits to the State’s Motion and Complaint, the State has certainly raised questions that go to the merits that are so serious and substantial as to make them fair grounds for litigation.

B. Defendants’ Conduct Promising to Save Consumers’ Homes from Foreclosure and then Failing to Perform the Promised Services Establishes Irreparable Harm.

While, as previously discussed, the State need not show immediate and irreparable harm under a statutory injunction, in the federal system the Middle District of Tennessee has stated that irreparable harm absent an asset freeze is “even more apparent where the very assets subject to a potential judgment will likely be dissipated without entry of the order.”¹⁴⁴ So even absent

¹⁴²*Six Clinics Holding Corp., II v. CAFCOMP Systems*, 119 F.3d 393, 407 (6th Cir.1997).

¹⁴³*Id.*

¹⁴⁴ *Advocate Capital, Inc. v. Law Office of A. Clark Cone, P.A.*, No. 3:06-0847, 2006 WL 3469576, at *3 (M.D. Tenn. Nov. 29, 2006) (citing *Elliott v. Kiesenwetter*, 98 F.3d 47, 58 (3d

having to prove this requirement, the State has established irreparable harm because evidence exists that Defendants have failed to provide promised services, which in some cases have resulted in consumers having losing their homes to foreclosure or having to file bankruptcy or pay an attorney additional fees to save their homes from foreclosure. In this case, Defendants have told consumers to deposit monies directly into Defendants' bank account that were supposed to go to consumer's respective mortgage companies as monthly payments. As the proffered Affidavits and Exhibits to the State's Motion show, Defendants have kept at least **\$12,682.89**¹⁴⁵ in "service fees" paid by consumers without refunding any of it and Defendants may dissipate these funds that the State seeks as restitution absent an asset freeze.

C. Substantial Harm to Others

Defendants have misrepresented to consumers that they can save their homes from foreclosure. If consumers continue to rely on these misrepresentations and pay for Defendants' unsuccessful services, more consumers may lose their homes to foreclosure and lose additional monies relying upon Defendants' false promises. Defendants did not earn this money in proper form and have not provided the services promised so the Court must look to the current consumers and other consumers who would be substantially harmed if Defendants fail to freeze these assets due as restitution.

D. The Asset Freeze is in the Public Interest

This Court should issue the asset freeze because the State has a strong interest in

Cir. 1996)).

¹⁴⁵ The State has also requested in its Complaint filed on November 18, 2008 that consumers be granted statutory interest on all amounts of restitution ordered by this Court under Tenn. Code Ann. §§ 47-18-108(b)(1) and 23-3-103(c)(1).

protecting and preserving the integrity of the commercial marketplace in Tennessee. The State asserts that the public interest is served if the State is able to collectively preserve ill-gotten proceeds that individuals who are already in dire financial situations and tragically lost this money trying to save their homes from foreclosure and that, due to the high transaction costs of litigation, may be unable to pursue themselves. After the State has shown a substantial likelihood of success on the merits for its TCPA claims, the Defendants have no vested right in the benefits of unlawfully and deceptively collected proceeds.

CONCLUSION

The State has demonstrated a substantial likelihood of success on the merits of its claim that Defendants have. The State generally alleges that the Defendants have: (a) offered services or guaranteed results that they could not or did not provide; (b) offered legal advice to consumers when they are not attorneys; (c) taken fees from consumers without providing any benefit or corresponding service; (d) failed to deliver on promises made to consumers often leaving consumers in a worse position than they would have been without the “services” of the Defendants; and (e) offered credit repair services in the State of Tennessee without having first registered a statutorily-required bond with the State of Tennessee.

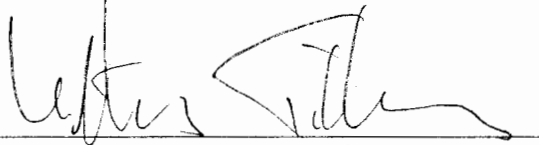
This Court has the ability to temporarily enjoin Defendants to prevent further conduct from occurring during this action. The temporary injunction and asset freeze are in the public interest and should issue following a full hearing.

This is the first application by the Plaintiff, the State of Tennessee, for extraordinary relief.

Respectfully submitted,

ROBERT E. COOPER, JR.
Attorney General and Reporter
B.P.R. No. 010934

JEFFREY L. HILL
Senior Counsel
B.P.R. No. 016731
JENNIFER E. PEACOCK
Assistant Attorney General
B.P.R. No. 022227
Office of the Tennessee Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202-0207
Telephone: (615) 741-3108
Facsimile: (615) 532-2910

A handwritten signature in dark ink, appearing to read 'William A. Tillner', is written over a horizontal line.

WILLIAM A. TILLNER, B.P.R. No. 22312
Assistant Attorney General
Office of the Tennessee Attorney General
2nd Floor, Donnelly J. Hill Building
170 North Main Street
Memphis, TN 38103
Telephone: (901) 543-9039
Facsimile: (901) 543-9025

CERTIFICATE OF SERVICE

I, William A. Tillner, do hereby certify that the foregoing document was served on Defendants via email to larrya16@yahoo.com and via United States Mail to:

Larry A. Weissman, Esq.
Weissman, Ostrow & Mitchell
5118 Park Avenue, Suite 600
Memphis, TN 38117-5714

on January 6, 2009.

A handwritten signature in black ink, appearing to read 'W. A. Tillner', written over a horizontal line.

WILLIAM A. TILLNER
Assistant Attorney General